

STATE OF MICHIGAN
COURT OF APPEALS

NICHOLAS VICTOR MATTSON,

Plaintiff-Appellant,

UNPUBLISHED
June 22, 2010

v

CASEY JO KEILMAN,

Defendant-Appellee.

No. 295644
Washtenaw Circuit Court
Family Division
LC No. 08-000889-DP

In the Matter of MKK, Minor.

MATTHEW ROBERT LINDEN and JENNIFER
LYNN LINDEN,

Petitioners-Appellees,

v

NICHOLAS VICTOR MATTSON,

Respondent-Appellant,

No. 295648
Washtenaw Circuit Court
Family Division
LC No. 08-000040-AD

and

CASEY JO KEILMAN,

Appellee.

Before: MURRAY, P.J., and SAAD and M. J. KELLY, JJ.

PER CURIAM.

Appellant Nicholas Mattson, the putative father of the minor child, appeals as of right from the circuit court's December 1, 2009, order awarding sole legal and physical custody of the child to his natural mother, Casey Jo Keilman, awarding Mattson parenting time, and requiring Mattson to pay child support of \$375 a month. The order was entered in both a paternity action filed by Mattson and an adoption case brought by petitioners Matthew and Jennifer Linden, who

are Keilman's aunt and uncle.¹ Mattson has filed a claim of appeal from the order in each case. This Court has consolidated the appeals. We vacate the trial court's December 1, 2009, order and remand for further proceedings.

This is the second time the adoption case has been before this Court. The relevant background facts are summarized in this Court's prior decision in *In re MKK*, 286 Mich App 546, 548-555; 781 NW2d 132 (2009). In the prior appeal, this Court held that Mattson had established good cause under MCL 710.25(2) to stay the adoption proceedings in favor of his separate paternity action and, therefore, the trial court erred by proceeding with a hearing under MCL 710.39(1) to determine whether Mattson's parental rights should be terminated for purposes of allowing the Lindens to adopt the child. *Id.* at 562-564. Accordingly, this Court vacated the trial court's March 18, 2009, order that was issued after the § 39 hearing in the adoption case and remanded for further proceedings "to allow [Mattson's] related paternity case to proceed." *Id.* at 564, 568. This Court noted that if Mattson perfects his legal paternity in the paternity action, "the adoption case may not proceed." *Id.* at 567 n 7.

While the prior appeal was pending, the trial court issued an order in the adoption case directing the parties to file memoranda addressing unresolved issues of custody, parenting time, and child support that were left open by the court's earlier March 18, 2009, order. The trial court thereafter decided these issues in an order dated December 1, 2009, which is the subject of these appeals.

We conclude that it is unnecessary to address the merits of Mattson's challenges to the trial court's December 1, 2009, order. That order emanates from the March 18, 2009, order in the adoption case, which this Court vacated in *In re MKK*.² Because this Court held that the trial court erred in proceeding with the § 39 hearing in the adoption case without first resolving Mattson's paternity action, and because the December 1, 2009, order was entered to resolve the issues of custody, parenting time, and child support that were left unsettled by the March 18, 2009, order, it follows that the December 1, 2009, order must also be vacated, and that the case should be remanded to allow Mattson's paternity case to proceed in accordance with this Court's decision in *In re MKK*.³ To hold otherwise would be to recognize the validity of the adoption proceedings, and the orders emanating in that case, contrary to this Court's determination in *In re MKK* that the adoption case should have been stayed in favor of Mattson's paternity action.

Accordingly, we vacate the trial court's December 1, 2009, order and remand to allow Mattson's paternity case to proceed in accordance with this Court's decision in *In re MKK*, 286 Mich App at 546,⁴ and to thereafter decide the issue of custody, parenting time and support. The

¹ Because of the parties' different lower court designations in the two cases, we will refer to the parties by their last name in this opinion.

² This Court in *In re MKK* also vacated the trial court's August 6, 2008, order denying Mattson's motion to stay the adoption case. *In re MKK*, 286 Mich App at 564, 568.

³ We also question the soundness of the trial court's custody determination, as it was made without holding an evidentiary hearing to determine the best interests of the child, MCL 722.23.

⁴ As we noted in our prior opinion, there has never been any real dispute that Mattson is the
(continued...)

trial court shall render its decisions on these issues no later than 42 days from the date of this opinion, and Mattson shall file the court's opinions and any pertinent transcripts with this Court as soon as proceedings in the trial court are concluded. Finally, pursuant to MCR 7.216(A)(7), we remand this case to the original judge assigned to the first filed paternity action, MCR 8.111(D)(1), or if that judge is unavailable, a new judge as chosen by the chief judge by lot. MCR 8.111(C). We retain jurisdiction.

/s/ Christopher M. Murray
/s/ Henry William Saad
/s/ Michael J. Kelly

(...continued)

biological father of the child.

Court of Appeals, State of Michigan

ORDER

Nicholas Victor Mattson v Casey Jo Keilman

Docket No. 295644; 295648

LC No. 08-000889-DP; 08-000040-AD

Christopher M. Murray
Presiding Judge

Henry William Saad

Michael J. Kelly
Judges

In accordance with the opinion issued contemporaneously with this order, we VACATE the trial court's December 1, 2009, order and REMAND this case to allow the paternity case to proceed in accordance with this Court's decision in *In re MKK*, 286 Mich App 546; 781 NW2d 132 (2009), and to thereafter decide the issues of custody, parenting time and support. The trial court shall render its decisions on these issues no later than 42 days from the date of this order, and Mattson shall file the trial court's opinions and any pertinent transcripts with this Court as soon as proceedings in the trial court are concluded. Finally, pursuant to MCR 7.216(A)(7), we remand this case to the original judge assigned to the first filed paternity action, MCR 8.111(D)(1), or if that judge is unavailable, a new judge as chosen by the chief judge by lot. MCR 8.111(C).

We retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN 22 2010
Date

Sandra Schultz Mengel
Chief Clerk